



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**999 18<sup>TH</sup> STREET- SUITE 300**

**DENVER, CO 80202-2466**

**Phone 800-227-8917**

**<http://www.epa.gov/region08>**

**September 28, 2004**

Ref: 8ENF-W-NP

**CERTIFIED MAIL: 7003-2260-0001-7778-8725**  
**RETURN RECEIPT REQUESTED**

Billy G. Shutts, Registered Agent  
Seven Bar Dairy, LLC  
8217 S. County Road South  
Fort Collins, CO 80528

Re: Administrative Order for Compliance  
under the section 309 (a) of the Clean Water  
Act, 33 U.S.C. §1319(a)

Dear Mr. Shutts:

Enclosed is an Administrative Order for Compliance ("Order"), which the United States Environmental Protection Agency ("EPA") Region 8 is issuing to Seven Bar Dairy, LLC ("Seven Bar") for violating the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.* (the "Act"). EPA has issued the Order under the authority of sections 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3).

The Order, which EPA has issued after consultation with the Colorado Department of Public Health and Environment ("CDPHE"), finds that Seven Bar has violated the federal concentrated animal feeding operation regulations found in 40 C.F.R. § 122.23, including the requirement to apply to CDPHE for a National Pollutant Discharge Elimination System ("NPDES") permit. The Order also directs Seven Bar to submit a letter to EPA and CDPHE within thirty (30) days of receipt indicating its intent to apply for a National Pollutant Discharge Elimination System "NPDES" permit. Enclosed is also a memorandum from the CDPHE regarding EPA enforcement proceedings in Colorado.

The Act requires the EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any orders issued thereunder. Section 309 of the Act

provides a variety of possible enforcement actions, including filing a civil or criminal action, filing an administrative penalty action, and/or issuing an order for compliance.

Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in U.S. District Court under sections 309(b), (c) and (g) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

The Order is to become effective thirty days after receipt. The purpose of allowing this thirty-day period is to provide Seven Bar the opportunity to confer with EPA about the Order. If you would like a conference with EPA, or if you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to Seven Bar's compliance with the Act, please contact Paul Holmquist, Technical Enforcement, at (303) 312-6459, or Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,

**Aundrey C. Wilkins for/**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Dave A. Akers, CDPHE (w/encl.)  
Tom Haren, AGPROfessionals, LLC (w/encl.)  
Cliff Shutts, Seven Bar Dairy, LLC (w/encl.)



*Printed on Recycled Paper*

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**IN THE MATTER OF:**

**Seven Bar Dairy, LLC  
16764 County Road 4  
Wiggins, Colorado  
Respondent**

---

)  
)  
)  
)  
)  
)  
)

**DOCKET NO. CWA-08-2004-0073  
  
ADMINISTRATIVE  
ORDER FOR COMPLIANCE**

**INTRODUCTION**

This administrative order for compliance (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by section 309(a)(3) of the Federal Water Pollution Control Act (the “Clean Water Act” or “Act”), 33 U.S.C. § 1319(a)(3), and its implementing regulations, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Seven Bar Dairy, LLC (“Respondent”) is a limited liability company organized under the laws of the State of Colorado, with its principal place of business at 16764 County Road 4, Wiggins, Colorado 80654.
2. Respondent is a “person” as that term is defined in section 502(5) of Act, 33 U.S.C. § 1362(5).
3. Respondent owns and/or operates a dairy at 16764 County Road 4 in Wiggins, Colorado.
4. On August 13, 2002, EPA representatives conducted an inspection of Respondent’s dairy.
5. On the date of the inspection, William DeGroot, facility manager, stated to EPA inspectors that the Respondent’s dairy confined 2,002 dairy cattle for a total of 45 days or more

in a 12-month period, and that crops, vegetation, forage growth or post-harvest residues were not sustained during the normal growing season over any portion of the dairy.

6. On May 28, 2004, EPA mailed to Respondent a request for information, pursuant to section 308 of the Act, 33 U.S.C. § 1318.

7. On June 15, 2004, Respondent replied to the request for information. In the reply, Respondent certified that its dairy contained 1,900 dairy cattle.

8. According to 40 C.F.R. § 122.23(b)(4), any lot or facility where more than 700 mature dairy cattle (whether milked or dry) have been, are, or will be stabled or confined and fed or maintained for at least 45 total days in any 12-month period, and where crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing period over any portion of the lot or facility is a “Large CAFO” or “large concentrated animal feeding operation.”

9. Respondent’s dairy is a CAFO and a Large CAFO, as those terms are defined in 40 C.F.R. § 122.23(b)(2) and (4).

10. According to 40 C.F.R. § 122.23(a), any facility meeting the definition of a CAFO set forth in 40 C.F.R. § 122.23(b) is a point source that requires a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Act, 33 U.S.C. § 1342 for discharges or potential discharges.

11. The term “discharge” is defined in 40 C.F.R. § 122.2 as the “discharge of a pollutant,” which in turn is defined in 40 C.F.R. § 122.2 and section 502(12) of the Act, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.

12. The term “pollutant” includes agricultural waste, according to section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

13. As a CAFO, the Respondent's dairy is a "point source" as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

14. The term "navigable waters" is defined as the waters of the United States, according to section 502(7) of the Act, 33 U.S.C. § 1362(7).

15. The term "waters of the United States" is defined to include various types of waters, including but not limited to interstate waters, their tributaries, and wetlands adjacent to either interstate waters or their tributaries, according to 40 C.F.R. § 122.2.

16. Kiowa Creek is located adjacent to the Respondent's facility, along its west side.

17. Kiowa Creek is a tributary of the South Platte River.

18. The South Platte River is an interstate waterway.

19. Kiowa Creek is a "navigable water" and a "water of the United States" as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

20. According to 40 C.F.R. § 122.21(a)(1), "all concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in [40 C.F.R. § 122.23(d)]."

21. According to 40 C.F.R. § 122.23(d)(1), "All CAFO owners or operators must seek coverage under an NPDES permit, except as provided in [40 C.F.R. § 122.23(d)(2)].

Specifically, the CAFO owner or operator must obtain permit coverage by either applying for an individual NPDES permit or submitting a notice of intent for coverage under an NPDES general permit. If the [permitting agency] has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the [permitting agency]."

22. The NPDES permitting agency for the State of Colorado is the Colorado Department of Public Health and Environment ("CDPHE"). (See 40 Fed. Reg. 16713, April 14, 1975.)

23. Respondent has never had an NPDES permit for its dairy.
24. Respondent has not applied to CDPHE for an NPDES permit for its dairy.
25. Having failed to apply for an NPDES permit and/or submitted information required for NPDES permit applicants as required by 40 C.F.R. §§ 122.21(a)(1) and 122.23(d)(1), the Respondent is in violation of section 308 of the Act, 33 U.S.C. § 1318.

#### COMPLIANCE ORDER

Pursuant to the authority of sections 308 and 309(a)(3) of the Act, 33 U.S.C. §§ 1318 and 1319(a)(3), Respondent is ordered to:

1. Within five (5) days after receipt of this Order, give written notice to EPA of the Respondent's intent to comply with the requirements of this Order.
2. Immediately conduct daily visual monitoring of all potential sources of pollutant discharges to navigable waters from the Respondent's dairy (sometimes referred to in this Order as the "CAFO"). Monitoring locations shall include, but are not limited to, areas with direct access of dairy cattle to any surface waters, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, or waste storage ponds.
3. Immediately develop and maintain a monitoring log containing the following information for each area monitored as stated in the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondent shall maintain the monitoring records at the CAFO for at least three years after the date of this Order and make them available for inspection or copying upon request by an authorized representative of EPA or the State. The operator of the CAFO shall know the location of the records.

4. Immediately conduct daily monitoring of precipitation at the CAFO using a rain gauge.

The precipitation should be recorded and maintained with the monitoring records.

5. For each observed discharge of any agricultural waste or other pollutant(s) from the CAFO that may enter Kiowa Creek or any other navigable water, Respondent shall:

- a. Within two hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to a laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R. part 136 for fecal coliform, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Ammonia, Nitrate-Nitrite, and Total Suspended Solids;

- b. Submit to EPA and CDPHE within fifteen days of the discharge a written report containing:

- 1) date and time of the discharge;
- 2) location of the discharge;
- 3) origin of the discharge;
- 4) estimated volume of discharge;
- 5) daily rainfall measurements for 30-days prior to the discharge event;
- 6) sample analysis results of the discharge;
- 7) steps taken to prevent reoccurrence of the discharge.

6. Within thirty days from receipt of this Order, apply to CDPHE for an NPDES permit for the CAFO.

7. Within thirty days from receipt of this Order, submit to EPA and CDPHE a construction schedule for a containment facility capable of holding runoff from a 25-year, 24-hour storm. The schedule is to include:

- 1) the date plans will be completed;
- 2) the date construction will begin;
- 3) the date construction will be 50% complete; and
- 4) the date construction will be complete.

8. The construction schedule will be incorporated into this Order upon its approval by EPA (with or without modifications).
9. Submit to EPA and CDPHE monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10<sup>th</sup> day of every month, until EPA notifies the Respondent in writing that this Order has been closed. The reports shall include an update on the progress of the construction of the containment facility and local rainfall amounts for the previous month.

#### CONTACTS FOR SUBMISSIONS

Submissions required by this Order shall be sent to:

U.S. Environmental Protection Agency  
Region 8 (8ENF-W-NP)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2408  
Attn: Paul Holmquist

Colorado Department of Health  
and Environment (W-P-B2)  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
Attn: Ron Jepson

#### RESERVATION OF RIGHTS

Nothing in this Order shall be construed to relieve Respondent of the requirement to obtain and comply with any NPDES permit or other applicable requirements of other federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any other legal requirement.

Violation of this Order, failure to submit the required information, or making a false statement under section 308 of the Act, may be punishable by a fine and/or imprisonment, and/or a civil action for appropriate relief in a district court of the United States, including a permanent or temporary injunction.



This Order shall take effect thirty days after the Respondent receives it.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 09/28/04

Aundrey C. Wilkins for/  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE  
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON September 28, 2004.**